SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

No. 1538

JANIE PASSEL, ET AL., *Appellants,*

vs.

FORT WORTH INDEPENDENT SCHOOL DISTRICT, ET AL., *Appellees.*

On Appeal From the Court of Civil Appeals
For the Second Supreme Judicial District of Texas
at Fort Worth

Appellees' Motion to Dismiss the Appeal on the Ground That It Does Not Present A Substantial Federal Question and an Alternate Motion to Affirm

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at Fort Worth

Appellees' Motion to Dismiss the Appeal on the Ground That It Does Not Present A Substantial Federal Question and an Alternate Motion to Affirm[1]

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article VII, Section 1, of the Constitution of the State of Texas provides as follows:

> "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

[1]The Appellees in this case are the Fort Worth ISD and the members of the Board of Education.

Article 2780, Vernon's Annotated Texas Civil Statutes, provides as follows:

> "Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, * * *"

Article 301d, Vernon's Annotated Penal Code of the State of Texas, provides as follows:

> "Section 1. In all counties of this State Public School Fraternities, Sororities, and Secret Societies are hereby prohibited in all the Public Schools of this State supported in whole or in part from public funds * * *"
>
> "Section 2. A Public School Fraternity, Sorority, or Secret Society as used in this Act is hereby defined to be any organization composed wholly or in part of public school pupils of public schools below the rank of College or Junior College as herein provided, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such school on the basis of the decision of its membership rather than upon the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aims of the organization."[1]
>
> "Section 3. Any Public School Fraternity, Sorority, or Secret Society as defined in the preceding Section of this Act is hereby declared to be an organization inimical to the public good."
>
> * * *
>
> "Acts 1937, 45th Leg., p. 1139, ch. 460; Acts 1949, 51st Leg., p. 803, ch. 429."

[1]By stipulation in the first trial (1967) and by proof and findings of the Trial Court in the second trial (1970), the clubs of the Appellants came within the definition of an organization prohibited by the Code.

In 1969 the Legislature re-enacted the provisions of Article 301d above, and incorporated the same in Vernon's Education Code, Sections 4.20 and 4.21, Acts 1969, 61st Leg., p. 889.[1]

STATEMENT OF THE CASE

After wide publicity in all of the news media and after extended hearings, the Board of Education enacted a rule on November 9, 1966[2] prohibiting secret clubs in all of the junior and senior high schools (28) in the Fort Worth system in compliance with state law. The effective date of the rule was September, 1967. The delay from November 9, 1966, to September, 1967, was granted by the Board in order that the clubs would have time to disband in an orderly way. All of the clubs have disbanded. The rule was prospective in nature in that it required compliance ten months after the date of its enactment. The rule only required the students in the Fort Worth schools to comply with the law.

On March 31, 1967, the Plaintiffs filed suit against the school district in the United States District Court for the Northern District of Texas at Fort Worth, Texas.[3]

After briefs and argument, the Court entered an order of abstention "until the Courts of the State of

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[1]This legislative enactment was subsequent to the decision of the Fort Worth Court of Civil Appeals in the case of Passel, et al. v. Fort Worth ISD, et al. and reported in 429 S.W. 2d 917 (1968).

[2]One of the attorneys of record in the Trial Court proceeding was present at the Board meeting and offered suggestions.

[3]Passel, et al. v. Fort Worth ISD, et al., No. CA-4-817.

Texas shall have been afforded the opportunity to determine the constitutional question here presented; * * *" The Texas Courts—Trial Court, Court of Civil Appeals, and the Supreme Court of Texas have since determined the law and the rule to be constitutional.

The Federal District Judge's Order of Abstention was in line with the decisions of this Court in *Railroad Commission v. Pullman*, 312 U.S. 496, 85 L.Ed. 971, and *Spector Motor Service v. McLaughlin*, 323 U.S. 101, 89 L.Ed. 101.

In the first hearing in the State District Court (1967), the Trial Judge sustained the Defendants' Motion to the Jurisdiction. This decision was affirmed by the Court of Civil Appeals reported in 429 S.W. 2d 917 (1968), and the Supreme Court of Texas reversed on the ground that the facts should have been fully developed [440 S.W. 2d 61 (1969)].

In April, 1970, there was a trial on the merits in an adversary proceeding before the Trial Court that lasted for two days.

The Superintendent of the schools [R. 13-114 and 450-56, Vol. 1], other administrative officials, teachers, parents, coaches (13 witnesses), testified at great length that the fraternities, sororities and secret clubs were "in" the schools and that their activities disrupted discipline and the orderly proceedings of the day to day operation. We briefly list only a few of such activities—

Disruption in general assemblies, pep rallies, and cafeteria; the mutilating of books, furniture and

walls of the buildings—[Twain Morrow, Vice Principal, Arlington Heights High School—R. 314-34, Vol. 1]

The requirement during initiation that boys kiss girls in the halls during school hours; encouragement of absenteeism by club members which caused a loss of state money by the district; disruption of teachers during class periods—[C. L. Turner, Vice Principal, Paschal High School—R. 348-67, Vol. 1]

Absenteeism in preparation for parties—[Mrs. Bill Ward, Assistant Principal and Dean of Girls, Eastern Hills High School—R. 368-72, Vol. 1]

Disturbances in class, effect on grades—[Mrs. J. K. Daniels, classroom teacher—R. 373-76, Vol. 1]

Congregating of club members in cafeteria; drinking of club members on football trips—[James E. York, classroom teacher—R. 379-84, Vol. 1]

The embarrassing and repulsive pencil and string incident—[Dayton G. Carter, classroom teacher—R. 385-99, Vol. 1]

Cutting classes; gathering on parking lots; truancy; pounding on tables yelling "loud Comanche type yells"; efforts of club members to prevent a Negro boy from being elected cheerleader at Paschal High School[1]—[J. D. Cooper, Vice Principal, Paschal High School—R. 400-15, Vol. 1]

Failure to receive a "bid" to one of the clubs resulting in forcing parents to take their daughters out of

[1]Within the last twelve years the Fort Worth ISD has been completely integrated without incident.

school and send them away to private schools—[Reverend James P. DeWolfe, Jr.—R. 117-37, Vol. 1]

Girls upset, crying, classes disturbed by activities of the clubs--[Mrs. Elizabeth Hull, classroom teacher —R. 127-37, Vol. 4]

Coaches Ludiker (Arlington Heights High School) R. 146-51, Vol. 4; Cox (Southwest High School) R. 155-64, Vol. 4; Allen (Paschal High School) R. 165-69, Vol. 4; all testified that the activities of the clubs were so disruptive that any boy who was a member of any such club could not participate in athletics.

The experienced trial judge made findings of fact and conclusions of law [Tr. 42-48].[1] Every finding was favorable to the Appellee and unfavorable to the Appellant. Among other things, the Court found:

1. Every student in the Fort Worth public school system, including members and non-members of charity clubs, "is afforded the same educational opportunities without discrimination."

2. "The activities of the 'charity clubs' have substantially and materially disrupted and affected the orderly operation of Arlington Heights High School, Eastern Hills High School and Paschal High School, all of which are high schools within the Fort Worth Independent School District."

3. "There was no evidence whatever that any of the exempted organizations had any effect whatever on the operation of the school system."

[1]The Trial Court's Opinion sets forth the findings of fact and conclusions of law. See Appendix "A" attached to this motion.

4. "The original twenty-three plaintiffs in this case have all graduated from high school."

5. "The members of the class for whom the original suit was brought have graduated from high school."

6. "Intervenors are all still attending high school and became parties to this suit prior to the time the original plaintiffs graduated from high school." (April, 1970)

The Trial Court entered judgment for the Schools. This judgment was affirmed by the Court of Civil Appeals as reported in *Passel, et al. v. Fort Worth ISD, et al.*, 453 S.W. 2d 888 (1970). The Texas Supreme Court denied a Writ.

THE CLUBS WERE IN THE SCHOOLS

The findings of the Trial Court foreclose the contention of the Appellants in the instant case that the activities of the clubs were not "in" the schools. The Appellants' entire case is based upon the contention that the activities of the club were outside of the schools. This contention was asserted eight times in the Appellants' Jurisdictional Statement. This contention was urged in the Trial Court, but it was not sustained by the evidence. On the contrary, the trier of the facts found that the activities of the clubs were in the schools and disrupted the discipline and orderly operations. In order for this Court to entertain probable jurisdiction: (1) It must disregard all of the testimony of the school authorities. (2) It must disregard the findings of fact of the Trial Court. (3) It must

disregard the facts as recited in the Opinion of the Court of Civil Appeals. (4) It must disregard the ruling of the Supreme Court of Texas.

Appellate Courts are bound by Trial Court findings and conclusions which are supported by evidence. *Willson v. Johnston*, 404 S.W. 2d 870 (1966).

In *Garner v. Louisiana*, 368 U.S. 157, 7 L.Ed. 2d 207, Mr. Chief Justice Warren, speaking for this Court said:

> "We of course are bound by a State's interpretation of its own statute and will not substitute our own judgment for that of the State's when it becomes necessary to analyze the evidence for the purpose of determining whether that evidence supports the findings of a state court." [p. 215]

THE QUESTIONS ARE MOOT

In the last hearing before the State District Court Judge, the testimony was uncontroverted and the Court so found that all of the original Plaintiffs and the class for whom the suit had been filed, had graduated from high school [Tr. 42-49]. Prior to the last decision of the Supreme Court of Texas, and while the case was pending before that court, the school district filed a Motion to Dismiss[1] and attached thereto an affidavit of the Superintendent of Schools under date of June 25, 1970, in which he swore under oath that every one of the Intervenors had graduated from high school prior to that date. There is no one before the Court with standing to prosecute this appeal. Since the clubs have disbanded, there is no class. It is no

[1]This motion was included in the record transmitted to the Clerk of this Court by the Clerk of the Court of Civil Appeals.

answer to argue that high school graduates have a "right" to return to school after they have graduated until they have reached the age of twenty-one. Thus, all questions are moot.

REASONS WHY THIS APPEAL SHOULD BE DISMISSED

1. The State has a substantial governmental interest in the public schools.

2. The Constitution enjoins the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

3. It must be presumed that the Legislature considered all factors when it enacted the statute prohibiting the secret clubs in the public schools. The findings of fact by the Trial Judge concerning the disruptive activities of the clubs in the schools confirms the wisdom of the legislative enactment. In *Cooper v. Aaron*, 358 U.S. 1, 3 L.Ed. 2d 5, this Court said:

> "It is, of course, quite true that the responsibility of public education is primarily the concern of the states."

In *Byrd v. Sexton*, 277 F.2d 418 (1960), certiorari denied 346 U.S. 818, the 8th Circuit said:

> "It is perhaps initially to be observed that the language quoted from Brown implies certain limitations. Neither that language nor the holding itself prescribes as a federal right the avail-

> ability of education, let alone free education, through state facilities. The opinion stands for the proposition that only 'where the state has undertaken to provide it,' the opportunity of an education 'is a right which must be made available to all on equal terms.' " [p. 425]

The Fort Worth Independent School District has strictly complied with the ruling in *Brown*[1] in that it has made available the right to an education to all on equal terms. Club members and non-club members have been afforded the same educational opportunities. The best proof is found in the fact that every member of the secret clubs and every member of the class for whom the suit was filed, including the intervenors, have all graduated from the Fort Worth high schools.

Mr. Chief Justice Warren, writing for this Court in the case of *U. S. v. O'Brien*, 391 U.S. 367, 20 L.Ed. 2d 672, said:

> " * * * we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. * * * " [p. 680]

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[1]Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083.

UNIFORMITY

In declaring the public policy of the State, the Legislature declared that fraternities, sororities and secret clubs were inimical to the public good. The law is applicable to all of the schools in the entire state. Likewise, the rule of the Board of Education prohibiting the clubs in the Fort Worth schools was applicable to every student in the junior and senior high schools in the system. The Trial Court, the Court of Civil Appeals and the Supreme Court of Texas all found the law and the rule to be reasonable. The constitutional guarantees of freedom of speech, equal protection and civil rights apply to every student in the entire school system and not to a limited social group. Likewise, the constitutional rights are placed in proper perspective when viewed from the educational needs and opportunities of students as distinguished from the contentions of a limited few, who according to the Trial Court:

> "The activities of the charity clubs have substantially and materially disrupted and affected the orderly operation of Arlington Heights High School, Eastern Hills High School, and Paschal High School, all of which are high schools in the Fort Worth Independent School District."

In *Tinker v. Des Moines Community School District*, 393 U.S. 503, 21 L.Ed. 2d 731, Mr. Justice Fortas speaking for the majority, said:

> "A student's rights therefore do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express

his opinions, even on controversial subjects like the conflict in Vietnam, if he does so 'without materially and substantially interfering with appropriate discipline in the operation of the school' and without colliding with the rights of others. Burnside v. Byars, supra, at 749. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech. Cf. Blackwell v. Issaquena City Bd. of Educ. 363 F. 2d 749 (CA5th Cir, 1966)."

CLASSIFICATION

The findings of the Trial Court that the exempted organizations (Boy Scouts, etc.) had not affected the orderly operation of the schools, forecloses the contention of Appellants concerning classification.[1] Further, classification of subjects is a legislative function and all doubts are to be resolved in favor of the reasonableness of the classification. [*San Antonio Retail Grocery v. Laferty*, 297 S.W. 2d 813; *State v. Southwestern Gas & Elec. Co.*, 193 S.W. 2d 675]

"The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." To the same effect see *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 99 L.Ed. 563, *Ferguson v. Skrupa*, 372 U.S. 726, 10 L.Ed. 2d 93.[2]

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[1]See Appendix "A"

[2]The authorities listed in Appendix "B" considered every question raised by the Appellants in the instant case. Two of the leading cases are Satan Fraternity v. Board, 22 So. Rep., 2d Series, p. 892, and Robinson v. Sacramento, 53 Cal. Rptr. 781.

PENAL PROVISIONS

The reference of Appellants to the penal provisions of the state law is wholly inapplicable in this case. The Texas Supreme Court in *Passel v. Fort Worth ISD*, 440 S.W. 2d 61-64, said:

> "Plaintiffs are not attempting to enjoin prosecutions under Article 301d. Apparently no prosecution is threatened or even contemplated. Injunctive relief is sought to prevent administrative enforcement of an administrative regulation adopted for the purpose of implementing the statute." [p. 64]

The school authorities have never contemplated nor suggested the possibility of invoking the penal provisions of the statute.

NO RACE PROBLEM INVOLVED

There is no race problem involved in this case. According to the findings of the Trial Court, the disruptive and adverse activities of the clubs were limited to three of the 28 high schools. Also, the Court found that the clubs were perpetuated by taking in additional members from the pupils enrolled in the school on the basis of the decision of the membership rather than on the free choice of any pupil in school who is qualified by the rules of the school to fill the special aims of the organization. This procedure was in violation of the Code. Before the clubs were disbanded, the membership was comprised wholly of white students, both the boys' clubs and the girls' clubs.

FEDERAL COURT DECISIONS

In the early case of *Waugh v. Board of Trustees*, 237 U.S. 589, 59 L.Ed. 1131, this Court decided that the State alone should determine whether fraternities should be allowed in the schools. Listen to the language employed:

> " 'It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that *membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions.* It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity.' " (Emphasis supplied.) [p. 747]

This Court also approved the language of the Supreme Court of Mississippi in the same case in which it was said:

> "Complainant is not deprived of any constitutional right, unless complainant can be said to have a constitutional right to breach the discipline of the school and set at naught the laws of the state."

All of the contentions urged in the present case were discussed and overruled in the case of *Webb v. State University of New York*, 125 Fed. Supp. 910, writ denied, in which the Court said:

> "We find little merit in the numerous contentions made by the plaintiffs as it is clear that the constitutionality of the action taken here cannot be questioned. A state may adopt such measure, including the outlawing of certain social organizations, as it deems necessary to its duty of supervision and control of its educational institutions."

To the same effect see *Hamilton v. Regents of The University of California*, 293 U.S. 245, 79 L.Ed. 343.

A more recent discussion of the right of the school authorities to control the conduct of students in the schools is found in the case of *Burnside v. Byars*, et al., 363 F.2d 744 (5th Cir. 1966)

> " * * * It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities.
>
> "Regulations which are essential in maintaining order and discipline on school property are reasonable * * * Therefore, a reasonable regulation is one which measurably contributes to the maintenance of order and decorum within the educational system. * * * "

To the same effect see *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (5th Cir., 1966).

STATUTES AND AUTHORITIES OF 25 STATES

Twenty-five states have enacted statutes that prohibit fraternities, sororities and secret clubs in the public schools. Some of these statutes are almost identical to the Texas statute. The list has been set forth in Appendix "B" attached to and made a part of this motion. Many of these statutes have been brought under attack alleging as in the present case, that they were in violation of the First and Fourteenth Amendments and civil rights. These contentions have been overruled and the statutes have been sustained. See authorities listed on Appendix "B".

UNREALISTIC CHARACTERIZATION

The appellants employed the term "right of association" in an effort to immunize the disruptive activities of the clubs in the schools. Appellants are content to rely upon authorities that are foreign to the regulation of the free public schools. The Appellants would paralyze the schools by encasing them in a semantic straight jacket by asserting rights that are not available to students who are not members of the select clubs. The Legislature, the Board of Education, the Trial Judge, the Court of Civil Appeals, and the Supreme Court of Texas feel that all students are entitled to equal treatment.

WHEREFORE, the Fort Worth Independent School District and the members of the Board of Education move the Court to dismiss the Appellants' Appeal on the ground that it does not present a substantial federal question and in the alternative to affirm the judgment of the State Courts.

Respectfully submitted,

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Counsel for Appellees

CERTIFICATE

I certify that I have served a copy of Appellees' Motion to Dismiss on Rufus S. Garrett, Jr., 919 Fort Worth National Bank Building, Fort Worth, Texas 76102, Counsel for Appellants, by depositing a copy of same in a mail box with first class Postage prepaid this ____ day of April, 1971.

Cecil A. Morgan

APPENDIX "A"

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
17TH JUDICIAL DISTRICT

No. 48931-C

PASSEL, et al.
vs.
FORT WORTH ISD, et al.

OPINION

I have concluded that plaintiffs and intervenors have failed to prove that Article 301d of the Penal Code is unconstitutional or that the administrative enforcement of the regulation adopted by the school board for the purpose of implementing this statute violates any of their constitutional rights.

In Passel, et al vs. Fort Worth Independent School District, et al, 440 SW2 61 (Supreme Court), the court held that on the record then before it the statute was not unconstitutional as applied to plaintiffs and indicated that the trial court should hear evidence to determine the aims and activities of the organizations excepted in Section 4 of Article 301d.

The evidence was substantially the same at the hearing last week as it was at the injunction hearing in 1967 (There was just more of it), except that some evidence was offered about the aims and activities of some of the organizations named in Section 4. (There was no evidence about Boy Scouts, Hi-Y, Girl Reserves

or Pan-American Clubs.) Evidence was also offered in an attempt to show that at least some of the "charity clubs" proposed to select members by a board of sponsors composed in part of mothers of active members.

Plaintiffs and intervenors failed to prove that there was not a reasonable basis for the classification established by the legislature or that the exempting of certain organizations from the statute was palpably arbitrary. There was no evidence whatever that any of the exempted organizations had any effect whatever on the operation of the school system. The amending of the constitutions and by-laws of some of the clubs fails to meet the requirements of Section 2 of the statute that any student who is qualified by the rules of the school to fill the special aims of the organization may join if he chooses to do so.

I make the following findings of fact and conclusions of law which I suggest be included in the judgment in this case:

FINDINGS OF FACT

1. This is a class suit on behalf of all minors who are members of a charity club and their parents.

2. The original twenty-three plaintiffs in this case have all graduated from high school.

3. The members of the class for whom the original suit was brought have graduated from high school.

4. Intervenors are all still attending high school and became parties to this suit prior to the time the original plaintiffs graduated from high school.

5. On November 9, 1966, the Board of Education of the Fort Worth Independent School District promulgated a rule prohibiting fraternities, sororities, secret societies (including charity clubs) from carrying on their activities in grades 7 through 12 in the Fort Worth Public Schools.

6. To implement the rule enacted by the Board, a supplementary application was required by the parent or guardian of each student enrolled in grades 7 through 12. This form required that the parent or guardian certify that his son or daughter was not a member or pledge of any organization described in Article 301d, and that the child would not join or participate in the activities of such a club or organization.

7. The original plaintiffs were members of a club prohibited by Article 301d. The intervenors are members of a club prohibited by Article 301d. The amended constitutions and by-laws of several of the clubs, including the Musagetes, provide that active members of such clubs shall be selected by a board of sponsors consisting, in part, of mothers of active members. Such amended constitutions and by-laws also provide that they may be amended by a vote of the active members. Such constitutions and by-laws do not provide that a pupil in any school who is qualified by rules of the school to fill the special aims of the organization may become a member of such organization upon his free choice. The Musagetes have not selected any members under the new constitution and by-laws and neither it nor any other "charity club" has operated

under amended constitution and by-laws. None of the "charity clubs," including the Musagetes, has ever selected its members on the basis of the free choice of any pupil in a school who was qualified by school rules to fill the special aims of the organization.

8. None of plaintiffs or intervenors has been denied enrollment in the Fort Worth Public Schools.

9. Every student in the Fort Worth Public School system, including members and non-members of "charity clubs," is afforded the same educational opportunities without discrimination.

10. The activities of the "charity clubs" have substantially and materially disrupted and affected the orderly operation of Arlington Heights High School, Eastern Hills High School and Paschal High School, all of which are high schools within the Fort Worth Independent School District.

11. Prior to the time that the "charity clubs" ceased to be active they engaged in activities similar in character to university fraternities, sororities and secret societies in the following manner: Interclub council, rush, pledge, parties, meetings, pins, similar dress.

12. None of the organizations (Boy Scouts, Hi-Y, et cetera) exempted by the statute has in the past affected the orderly operation of the schools in the Fort Worth Independent School District, and none of such organizations has participated in school activities.

13. Arlington Heights High School and Paschal High School each has societies and clubs sponsored by school authorities. Any student in each of the

schools is eligible for membership in any one or all of such societies and clubs if he meets the special aims of the organization such as scholarship, member of a football team and the like.

CONCLUSIONS OF LAW

1. The legislature alone determines the public policy for the state, and this court presumes that the legislature considered all of the facts which are in evidence when it enacted Article 301d of the Penal Code.

2. Courts favor constitutionality of statutes and must presume that the legislative body has acted within its powers in enacting Article 301d.

3. One who attacks the constitutionality of a statute must show that the statute is palpably arbitrary, and without reasonable basis.

4. Plaintiffs and intervenors have failed to show by a preponderance of the evidence that the legislature had no reasonable basis for the classification established in Section 4, Article 301d, Penal Code, or that the enactment of the statute was palpably arbitrary.

5. The classification set forth in Section 4 does not constitute an unlawful discrimination against plaintiffs and intervenors, nor does the act or any section thereof deprive plaintiffs and intervenors of any personal or civil right guaranteed to them by the state or federal constitutions.

Judgment is rendered for defendants.

Chas. J. Murray
Judge Presiding.

APPENDIX "B"

STATUTES AND AUTHORITIES OF 25 STATES

Statutes

Arkansas — Ark. Stat. 1947, §§80-2001-2007
Colorado — Colo. Rev. Stat. 1963 123-21-18, 19
Florida — Fla. Stat. Ann., Title XV, §§232.39-232.42 (Vol. II)
Idaho — Code §§33-1901 through 33-1903
Illinois — Rev. Stat. 1959, Ch. 122 §§31-1-31-5
Indiana — Burn's Stat. §§28-5106
Iowa — Code Ann. §287.1-4
Kansas — Kan. Stat. §72-5311
Louisiana — LSA Rev. Stat. §§17:2091-2093
Maine — Rev. Stat., Title 20, §803
Massachusetts — Annotated Laws, Ch. 71, §47 (Vol. 2B)
Michigan — Stat. Annotated, Title 15, §§15.3921-15.3924 (Vol. II)
Minnesota — Minn. Stat. Ann., §127.17
Mississippi — Miss. Code 1942, §6486-01
Montana — Rev. Code 1947 §75-2802; §§75-4223 through 4227
Nebraska — Rev. Stat. 1943 §§79-4, 125-79-4, 127
New Jersey — NJSA §§18A:42-5, 18A:42-6
Oklahoma — Stat. Ann. 70 §20-2
Ohio — Page's Revised Code Ann. Title 29, §2923.35
Oregon — Ore. Rev. Stat. §336.610
Pennsylvania — Purdon's Stat. Ann., Title 24, §5-511

Rhode Island — Laws of R. I. 1956 §16-38-4
Texas — 301d Penal Code
Vermont —Vt. Stat. Ann. Title 16 §1164
Washington — 43.63.140(5)

Authorities

Coggins, et al. v. Board of Education of Durham, 28 S.E. 2d 527 (North Carolina)

Holroyd, et al. v. Eibling, et al., 188 N.E. 2d 208 (Ohio)

Antell v. Stokes, 191 N.E. 407 (Massachusetts)

Satan Fraternity, et al. v. Board of Public Instruction for Dadc County, et al., 22 So. Rep., 2d Series, p. 892 (Florida)

Judy Robinson, et al. v. Sacramento City Unified School District, et al., 53 Cal. Rptr. 781 (California)

Steele v. Sexton, 234 N.W. 436 (Michigan)

Lee v. Huffman, 166 N.W. 565 (Iowa)

Burkitt v. School Dist., 246 Pac. 2d 566 (Oregon)

Hughes v. Caddo Parish, 57 F. Supp. 508, affirmed 89 L.Ed. 554 (Louisiana)

Wayland v. Hughes, 86 Pac. 642 (Washington)

Wilson v. Board of Education, 84 N.E. 697 (Delaware)

Wilson v. Abilene ISD, 190 S.W. 2d 406, ref. W. M. (Texas)